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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/692,054

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Peter D. Costantino

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65989

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08/18/2008

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EXAMINER

SEVERSON, RYAN J

ART UNIT

PAPER NUMBER

3731

NOTIFICATION DATE

DELIVERY MODE

08/18/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptomailnyc@kslaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/692,054	<b>Applicant(s)</b> COSTANTINO ET AL.	
	<b>Examiner</b> Ryan Severson	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 26-49,51-58 and 61-67 is/are pending in the application.
- 4a) Of the above claim(s) 31,44-49,61 and 62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-30,32-43,51-58 and 63-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 September 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/5/2007, 7/15/2008</u> .                                    | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06 June 2008 has been entered.

### ***Information Disclosure Statement***

2. Applicant should note that the large number of references in the attached IDS have been considered by the examiner in the same manner as other documents in Office search files are considered by the examiner while conducting a search of the prior art in a proper field of search. See MPEP 609.05(b). Applicant is requested to point out any particular references in the IDS which they believe may be of particular relevance to the instant claimed invention in response to this office action.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 26-30, 32-43, 51-53, 58, 63-65 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greene, Jr. et al. (6,165,193) in view of Richter et al. (3,961,629).** Greene reference discloses a device having a polymeric matrix implant (20, see figure 2) that is capable of expanding from a compressed configuration (see figure 8) to an expanded configuration (see figure 10). The implant supports an aneurysm wall and has a fluid path there through (the pores provide a fluid path). The device further includes a projecting portion (34). A further element (22) is strut-like and is capable of helping support the aneurysm wall and is made of a different material than the implant (20). However, Greene reference does not disclose the matrix is reticulated. Attention is drawn to Richter reference, which teaches the use of a fully reticulated matrix (see column 5, lines 30-50) for use in surgical procedures for rapid fluid absorption. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the polymer matrix of Green reference a fully reticulated matrix in the manner taught by Richter reference for rapid fluid absorption to expand the implant rapidly to fill the aneurysm.
5. Regarding claim 32, the combination of Greene and Richter references does not disclose a second implant. Although the reference does not disclose a plurality of implants, the courts have held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Art Unit: 3731

6. Regarding claims 51-53 and 65, the combination of Greene and Richter references does not disclose the range of pore diameter sizes as claimed. However, the courts have held where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.”

*In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955)

7. **Claims 54, 55 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greene, Jr. et al. (6,165,193) in view of Richter et al. (3,961,629) as applied to claims 27 and 63 above, and further in view of Spaans et al.**

**(6,784,273).** The combination of Greene and Richter references does not disclose the foam is polyurethane with a polycarbonate polyol component and an isocyanate component. Attention is drawn to Spaans reference, which teaches a polymeric foam for implants (see column 1, lines 65-67) may be polyurethane (see title) with an isocyanate component (see column 1, lines 56-59) and a polycarbonate component (see column 2, lines 49-54) to provide a device that has good mechanical properties but is lightweight and flexible. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the polymeric foam implant of Greene reference with polyurethane having isocyanate and polycarbonate components, as taught by Spaans reference, to provide a device that has good mechanical properties but is lightweight and flexible.

Art Unit: 3731

8. **Claims 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greene, Jr. et al. (6,165,193) in view of Richter et al. (3,961,629) as applied to claim 63 above, and further in view of Slaikeu et al. (6,231,590).** The combination of Greene and Richter references does not disclose the foam further includes growth factors or elastin. Attention is drawn to Slaikeu reference, which teaches an implant may include elastin and/or growth factors (see column 7, lines 15-21) to promote cellular ingrowth between the implant site and the implant itself. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include elastin and growth factors in the implant of Greene reference, as taught by Slaikeu reference, to promote cellular ingrowth between the implant site and the implant itself.

#### ***Response to Arguments***

9. Applicant's arguments with respect to claims 63 and 67 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Severson whose telephone number is (571)272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3731

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. S./

Examiner, Art Unit 3731

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3731